IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 182 of 2002(S/S)
(Old No. 10414/1994)

Bhim Singh Nainwal son of Sri T.S. Nainwal, working in Dev Singh Bisht Constituent College, Nainital

……. Petitioner.

Versus

1. Chancellor, Kumaon University, Lucknow.
2. State of U.P. through 1Secretary Education, Lucknow.
3. Vice Chancellor, Kumaon University Nainital, district Nainital.

…… Respondents.

Sri V.K. Bisht, learned counsel for the petitioner.
Sri. B.D. Upadhayaya, learned counsel for the respondents.

AND

Writ Petition No.281 of 2001 (S/S).

Mahendra Lal Kanaujiya son of Late Munna Lal, Junior Assistant, Department of Chemistry, Kumaon University Campus, Almora.

……. Petitioner

Versus

1. Kumaon University, Nainital through its 1Registrar.
2. Vice Chancellor, Kumaon University Nainital, district Nainital.

…… Respondents.

Sri V.K. Bisht, learned counsel for the petitioner.
Sri. B.D. Upadhayaya, learned counsel for the respondents.

28.08.2006

HON'BLE RAJESH TANDON, J.

By the present writ petitions the petitioners have prayed for a writ of mandamus to fix the seniority of the petitioners from November, 1974, the petitioner of writ petition No. 182 of 2002 and from May, 1974, the petitioner of writ petition No. 281 of 2001 when the petitioners were appointed which were subsequently transferred to the University concerned. Further prayer has been made for a writ of mandamus to give all the benefits treating the initial appointment of the petitioners with all consequential benefits.

Briefly stated, on 1.12.1973 Kumaon University and Garhwal University were established by the State of U.P. as examining body for the two government colleges, one Thakur Dev Singh Bisht, Government Degree College, Nainital and another Degree College, Almora. The petitioners were initially

appointed in the Government Degree College and thereafter they were absorbed in the University service by way of transfer.

The grievance of the petitioners is that the petitioners were in the service of the Government but the University on his own accord has determined the seniority and the petitioners are entitled for the continuance of their service. The petitioners are, therefore, aggrieved by the decision of the Kumaon University and they filed the representation before the Chancellor but the same has not been decided. The petitioners have also alleged that they filed representation to the Chancellor for considering their past services and determination of their seniority from the date of their initial appointment but the same is still pending and has not yet been decided. In the last representation it has been stated by the petitioners that the seniority is being counted from 1.2.1989 when in point of fact the petitioners are entitled for their seniority from the date of their joining in Government service on 9.11.1974 and 16.5.1974 respectively.

Sri V.K. Bisht counsel for the petitioners has referred the Government Order dated 4.6.1980 by which the services of the petitioners were absorbed in the University. Para 9 to that effect is quoted below:

"fo"k; %& jktdh; egkfo|ky; uSuhrky ,oa vYeksMk dsk dqekW;w fo'ofo|ky;] usuhrky esa rFkk jktdh; egkfo|ky;] ikSMh Jhuxj ¼x<oky½ ,oa fVgjh x<oky dks x<oky fo'ofo|ky;] x<oky esa gLrkUrj.k ds dkj.k ogkW ds r`rh; ,oa prqFkZ oxZ ds jktdh; deZpkfj;ksa ds fo'ofo|ky;ksa esa lsok esa LFkkukUrj.k ,oa lafoy;u dh 'krsZA

9- tks deZpkjh fo'ofo|ky; dh lsok esa lafoyhu gksus ds i{k esa viuk fodYi ugha Hkjsaxs mUgSa izns'k ds fdlh jktdh; egkfo|ky; vFkok f'k{kk foHkkx ds v/khuLFk dk;kZy;ksa ¼e.Myh; vFkok tuinh;@dk;kZy;ksa esa ;fn mudh fu;qfDr fnukad 24&10&1974 ls iwoZ dh gS½ esa lek;ksftr fd;k tk;sxkA

izekf.kr g0@v0 ¼ek;kjke½

lgk;d dqylfpo ¼ek0½ f'k{kk funs'kd ¼m0iz0½

dqek;wW fo'ofo|ky;] uSuhrkyA mRRkj izns'kA"

According to the petitioners, they have given option in accordance with the condition mentioned in para No.3. Copy of the letter No. Affi/XII-16/1000 dated: Nainital-17.6.1977 from Dr. D.N. Agrawal, Registrar, Kumaon University, Nainital to the Principal, D.S.B. College, Nainital. Para No. 3 reads as under:

"3. I am to request you to obtain the option within ten days and send them to the University. As there is no proforma prescribed for obtaining the option, the same may please be obtained in plain paper".

The petitioners have also submitted that three persons have been promoted by giving their seniority. However, it will be open for the respondent No. 1 to examine the record and pass the order accordingly.

Sri B.D. Upadhyayaya appearing for the University has submitted that the petitioners have already availed the alternative remedy by filing the appeal to the Chancellor by way of representation and, therefore, the alternative remedy having already been availed the writ petition is not maintainable. He has referred the judgment reported in **U.P. State Spinning Co.Ltd. Vs R.S. Pandey and another-(2005) 8 SCC 264**. The relevant paragraphs are quoted below:

"Except for a period when Article 226 was amended by the Constitution (Forty Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a wrong case or that there exist good grounds to invoke the extraordinary jurisdiction.

Constitution Benches of this Court in K.S. Rashid and Son Vs Income Tax Investigation Commission, Sangram Singh Vs Election Tribunal, Kotah, Union of India Vs T.R. Varma, State of U.P. Vs Mohd. Nooh and K.S. Venkataraman and Co. (P) Ltd. Vs. State of Madras held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The court, in

extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

Another Constitution Bench of this Court in State of M.P. Vs. Bhailal Bhai held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in N.T. Lveluswami Thevar Vs. G. Raja Nainar, Municipal Council, Khurai Vs Kamal Kumar, Siliguri Municipality Vs Amalendu Das, S.T. Muthusami Vs K. Natarajan, Rajasthan SRTC Vs Krishna Kant, Kerala SEB Vs Kurien E. Kalathil, A. Venkatasubbiah Naidu Vs S. Chelloppan, L.L. Sudhakar Reddy Vs State of A.P. Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs State of Maharashtra, Pratap Singh Vs State of Haryana and GKN Driveshafts (India) Ltd. Vs ITO.

Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition. Usually when writ petition is entertained notwithstanding availability of alternative remedy and issues are decided on merits, this Court is slow to interfere merelyon the ground of availability of alternative remedy. But the facts of the present case have special features, which warrant inteference."

The petitioner has also referred the judgment reported in **Durga Enterprises (P) Ltd and another Vs Principal Secretary, Govt. of U.P.- (2004) 13 SCC 665** to the following effect:

"Leave granted.

By the impugned order the writ petition, which was pending for a long period of thirteen years, has been summarily dismissed on the ground that there is remedy of civil suit. The dispute between the parties was concerning exercise of the respondents' alleged right of re-entry on the disputed property in accordance with sub rules (2) of Rule 5 of the Land Acquisition (Companies) Rules, 1963. The aforesaid Rules contain a mechanism for adjudication of a dispute relating to the alleged breach of terms of the agreement and the manner in which it is to be resolved.

The High Court, having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit.

We, therefore, set aside the impugned order of the High Court and remit the matter to it for taking a decision on merits, after hearing the parties, within the earliest possible period.

The appeal is, accordingly, allowed.

During the pendency of the writ petition in the High Court the status quo as of today, with regard to possession of the property in question, shall be maintained and the parties will not create any third party rights".

In view of the above, the matter is remitted back to the Chancellor for deciding the appeal in accordance with law and the rules framed therein.

However, liberty is given to the petitioners to file fresh representation for making their grievance within a period of two weeks from the date of production of certified copy of the order and the same shall be disposed of by the respondent within a period of two weeks thereafter.

Subject to aforesaid observations, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J)

28.08.2006
Negi.